Reserved Judgment

THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Arbitration Application No. 01 of 2005 (S/J)

(Under Section 11(6) of the Arbitration and Conciliation Act, 1996)

Sh. Sushil Nagrath S/O Shri N.N.Nagrath R/O 36, Co-operative Industrial Estate, Patel Nagar, Saharanpur Road, Dehradun.

……. Applicant.

Versus

1. Shri N.N. Nagrath S/O Late Shri Sant Ram Ji Nagrath R/O "Lal Bhawan" 36, Co-operative Industrial Estate, Patel Nagar, Saharanpur Road, Dehradun.
2. Shri Vinod Sood S/O Shri Dharampla Sood R/O 20/15 Mansingh Wala, District Dehradun.

….Respondents.

Sri V.K.Kohli, Senior Advocate, assisted by Sri I.P.Kohli, learned counsel for the applicant.
Sri S.N.Babulkar Sr.Adv., assisted by Sri Ravi Babulkar, learned counsel for the respondent no.1.
Sri Anil Dabral, learned counsel for the intervener.

Date November 20, 2007.

Hon'ble B.S. Verma, J.

(Intervention Application No. 2374 of 2007)

In this case, initially the applicant moved an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 *(for short the Act),* for appointment of an arbitrator for settlement of disputes between the parties. It was prayed by the applicant that preferably a retired Judge may be appointed as an Arbitrator. This Court vide order dated 02-08-2005 observed that in view of agreement Clause 30, there was an agreement between the parties for settlement of disputed. It was also observed that if there is no agreement for appointment of arbitrator, the aggrieved party may approach Hon'ble the Chief Justice under Section 11 of the Act. Sine no arbitrator was appointed, it was observed that the award was not binding. Accordingly Sri Nand Prasad, Advocate was appointed as Arbitrator. The Arbitrator was required to conclude the arbitral proceedings within four months. But no award was made within the stipulated time and time extension application was moved. By order dated 21-7-2006, the learned

Arbitrator was granted three months' time to conclude the arbitral proceedings and to submit award

Again, the award was not submitted within the time extended by the Court and another time extension application was moved. The application was strongly resisted by the learned counsel for the applicant on the ground that the prayer was made to appoint some retired Judge to act as an Arbitrator. This Court vide order dated 15-11-2006 has appointed Justice I.P. Vashisth (Retired High Court Judge) as Sole Arbitrator to decide the disputed between the parties.

Lateron, one Sri Pradeep Nagrath S/O Sri N.N.Nagrat has moved intervention application on 18-8-2007 on the ground that the intervener-applicant has interest in the dispute between the parties, therefore, the intervener be arrayed as respondent no.3 to the proceeding. Against this application, objection has been filed on behalf of applicant Sushil Nagrath on the ground that the intervener is a third party, therefore, under the provisions of the Act the application is not maintainable. It was submitted by the learned counsel for the applicant that the intervener moved an application before the learned Arbitrator for impleading him as party. The said application was rejected by the learned Arbitrator vide his order dated 12-4-2007, hence he has no right to move any application for the same purpose before this Court. It has also been contended that the intervener is not a partner of the alleged firm M/s Nagrath Iron and Steel Works. The applicant has filed Photostat copy of Partnership Deed dated 30-6-1994 to show that the firm M/s Nagrath & Steel Works formed on 8-2-1992 does not exist w.e.f. 30-6-1994. According to the applicant, this firm was divided into two divisions, namely M/s Nagrath Iron and Steel Works (Fabrication Division) and M/s Nathrath Iron and Steel Works (Foundry Division) and two separate partnership deeds each dated 30-6-1994 were constituted. In both these partnership deeds the partners were the petitioner Sh. Sushil Nagrath, respondent no. 1 Shri N.N.Nagrath and Shri Pradeep Nagrath. From the midnight of

10-8-1994 Shri Pradeep Nagrath, one of the partners of the Foundry Division voluntarily retired from the firm and the remaining two partners Sushil Nagrath and Sri N.N.Nagrath continued with the partnership firm after reconstituting the said firm on 11-8-1994. The applicant has filed copy of reconstitution deed as Annexure II to the objection.

I have considered the rival partners of the parties and perused the material on record.

It is apparent from the documents filed by the applicant along with the objection filed by him that the intervener has no concern with the dispute, which has arisen between the parties. It is not dispute that the application for impeadment moved by the intervener was rejected by the arbitrator vide order dated 12-4-2007. The application for intervention is devoid of merit and is hereby rejected.

In the case at hand, the sole arbitrator Justice I.P. Vasishth by his order dated 28-4-2007 has declined to continue with the arbitral proceedings in the matter.

In the facts and circumstances of the case, ***Justice Krishna Kumar (Retired High Court Judge), E.C. Road, Dehradun*** is appointed as Sole Arbitrator in the case to decide the disputes between the parties, conclude the arbitral proceedings and to give his award expeditiously as far as possible.

The Registry Shall ensure transmission of the entire record of arbitral proceedings to newly appointed Arbitrator, namely, Justice Krishna Kumar (Retired High Court Judge) at an early date.

(B. S. Verma, J.)

RCP